

**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**

STATE OF WEST VIRGINIA, ex rel.,

**G. ISAAC SPONAUGLE, III,**  
West Virginia citizen and taxpayer,  
Petitioner,

v.

Civil Action Number: 18-P-442  
Honorable Charles E. King, Judge

**JAMES CONLEY JUSTICE, II,**  
Governor of the State of West Virginia,  
Respondent.

**PETITIONER'S RESPONSE TO RESPONDENT'S MOTION TO DISMISS**

Comes now your Petitioner, G. Isaac Sponaugle, III, a West Virginia citizen and taxpayer, and moves that Respondent's Motion to Dismiss, pursuant to Rule 12(b) of the West Virginia Rules of Civil Procedure, be denied. In support of this motion, Petitioner states the following:

- 1) Petitioner, as set forth in detail in the Memorandum in Support of Petition for Writ of Mandamus that has been previously filed with the Court, is entitled to a writ of mandamus as a matter of law.
- 2) The West Virginia statutory and constitutional duty for the Governor of the State of West Virginia to "reside" can neither be described as "nebulous" nor labeled as "discretionary". It can be accurately described as precise and mandatory.

**Law Regarding Residency**

West Virginia case law about residency and domicile dates to 1888. In *White v. Tennant*, 31 W.Va. 790, 8 S.E. 596, 597, the Court stated: "Two things must concur to establish domicile,-the fact of residence, and the intention of remaining. These two must exist, or must have existed, in combination.... The character of the residence is of no importance; and if domicile has once existed, mere temporary absence will not destroy it, however long continued."

"The question of residence is one of intention, and the old residence is not considered as lost or abandoned as long as the animus revertendi remains." *Maslin's Executors v. Hiatt*, 37 W.Va. 15, 16 S.E. 437, 439 (1892). The Supreme Court further elaborated in *State ex rel. Linger v. County Court of Upshur County*, 150 W.Va. 207, 144 S.E.2d 689, 702-703 (1965):

**"Two fundamental elements are essential to create a residence, and these elements are: (1) Bodily presence in a place. (2) The intention of remaining in that place. Residence is thus made up of fact and intention, the fact of abode and the intention of remaining, and is a combination of acts and intention. Neither bodily presence nor intention alone will suffice to create a residence. There must be a combination and concurrence of these elements and when they occur, and at the very moment they occur, a residence is created." ... A person is not considered to have lost his residence when he leaves his home and goes into another state, territory or county, for temporary purposes merely, with the intention of returning.... A person does not lose his residence by leaving it with an uncertain, indefinite, half-formed purpose to take up residence elsewhere, and until his purpose to remain has become fixed, he does not abandon his former residence.**

The aforesaid basic concepts in law have been reiterated many times by the Supreme Court of Appeals of West Virginia. E.g., *Shaw v. Shaw*, 155 W.Va. 712, 187 S.E.2d 124, 127 (1972); *Ward v. Ward*, 115 W.Va. 429, 176 S.E. 708 (1934). Accord, *State-Planters Bank and Trust Company v. Commonwealth*, 174 Va. 289, 6 S.E.2d 629, 632 (1940); *White v. Manchin*, 173 W.Va. 526, 318 S.E.2d 470, 482 (1984).

### **Mandatory Duty to Reside at the Seat of Government**

Section 20 of Article VI of the West Virginia Constitution provides as follows:

#### **6-20. Seat of government.**

The seat of government shall be at Charleston, until otherwise provided by law.

Section 1 of Article VII of the West Virginia Constitution provides as follows:

#### **7-1 Executive department.**

The executive department shall consist of a governor, secretary of state, auditor, treasurer, commissioner of agriculture and attorney general, who shall be ex officio reporter of the court of appeals. Their terms of office shall be four years, and shall commence on the first Monday after the second Wednesday of January next after

their election. They shall reside at the seat of government during their terms of office, keep there the public records, books and papers pertaining to their respective offices, and shall perform such duties as may be prescribed by law.

W.Va. Code § 6-5-4 provides as follows:

**§6-5-4. Residence of officers.**

The Governor, Secretary of State, state superintendent of free schools, Auditor, Treasurer, Attorney General and Commissioner of Agriculture, shall reside at the seat of government during their term of office, and keep there the public records, books and papers pertaining to their respective offices. Every judge of a circuit court shall, during his continuance in office, reside in the circuit for which he was chosen. Every county and district officer, except the prosecuting attorney, shall, during his continuance in office, reside in the county or district for which he was elected. And the removal by any such officer from the state, circuit, county or district for which he was elected or chosen shall vacate his office.

The constitution and statutory language are explicit, in plain ordinary clear English, in setting forth unequivocally that residing at the seat of government during the term of office, and keeping there the public records, books and papers pertaining to that office is a nondiscretionary duty of holding the office of Governor. "Where a provision of a constitution is clear in its terms and of plain interpretation to any ordinary and reasonable mind, it should be applied and not construed." Syl. Pt. 3, *State ex rel. Smith v. Gore*, 150 W. Va. 71, 143 S.E.2d 791 (1965). "Words used in a state constitution, as distinguished from any other written law, should be taken in their general and ordinary sense." Syl. Pt. 6, *State ex rel. Trent v. Sims*, 138 W. Va. 244, 77 S.E.2d 122 (1953). "Questions of constitutional construction are in the main governed by the same general rules applied in statutory construction." Syl. pt. 1, *Winkler v. State School Building Authority*, 189 W.Va. 748, 434 S.E.2d 420 (1993). "The provisions of the Constitution, the organic and fundamental law of the land, stand upon a higher plane than statutes, and they will as a rule be held mandatory in prescribing the exact and exclusive methods of performing the acts permitted or required." Syl. Pt. 2, *Simms v. Sawyers*, 85 W. Va. 245, 101 S.E. 467 (1919).

Section 1 of Article VII of the West Virginia Constitution uses the word "shall" reside at

the seat of government during their terms of office, keep there the public records, books and papers pertaining to their respective offices. The word shall when used in constitutional provisions has been determined to be used in the mandatory sense and not discretionary sense. "As used in constitutional provisions, the word 'shall' is generally used in the imperative or mandatory sense." Syl. Pt. 3, *State ex rel. Trent v. Sims*, 138 W. Va. 244, 77 S.E.2d 122 (1953). "Courts are not concerned with the wisdom or expediencies of constitutional provisions, and the duty of the judiciary is merely to carry out the provisions of the plain language stated in the constitution." Syl. Pt. 3, *State ex rel. Casey v. Pauley*, 158 W. Va. 298, 210 S.E.2d 649 (1975).

The Supreme Court of Appeals of West Virginia has interpreted Section 1 of Article VII of the West Virginia Constitution to be nondiscretionary constitutional duty of the executive department. This has been the rule of land for over 140 years in this state. 'It was his duty to do so, in fidelity to his oath of office to support the constitution of the State; and the constitution of the State unequivocally requires that he shall reside at the seat of government during his term of office, and keep there the public records of his office, and commands him, as the chief executive officer, in whom is vested the chief executive power, to "take care that the laws be faithfully executed."' *Slack v. Jacob*, 8 W.Va.612, 657 (1875).

3) A writ of mandamus is available to compel negligent conduct by a governmental official to bring it within compliance with any statutory or constitutional standard. "Mandamus will lie against a State official to adjust prospectively his or her conduct to bring it into compliance with any statutory or constitutional standard." Syl. pt. 2, *Gribben v. Kirk*, 466 S.E.2d 147, 195 W.Va. 488 (1995).

4) No other remedies exist to make Respondent follow and perform the West Virginia statutory and constitutional duties to reside at the seat of government during his term of office, and

keep there the public records, books and papers pertaining to his respective office. Petitioner brought this action in his individual capacity as a citizen and taxpayer, not as an elected official, nor does the law grant a member of the West Virginia Legislature any special privilege over that of a citizen and taxpayer to have the laws followed by an elected official rather than willfully ignored. Further, a future election as a remedy as Respondent asserted, does not provide a remedy for the current neglect of a mandatory statutory constitutional duty by an elected official. If that was the only remedy, then the result would make all mandated duties by elected officials under West Virginia law to be null and void after the elected official is elected to office.

5) Rule 12(b)(6) of the West Virginia Rules of Civil Procedure authorizes the filing of a motion requesting dismissal of a claim or counterclaim for "failure to state a claim upon which relief can be granted." The Supreme Court of Appeals of West Virginia in *Highmark West Virginia, Inc. v. Jamie*, 655 S.E. 2d 509, 221 W.Va. 487 (2007) analyzed Rule 12(b)(6) and set forth the following standard:

"In syllabus point 3 of *Chapman v. Kane Transfer Company*, 160 W.Va. 530, 236 S.E.2d 207 (1977), which holds: "The trial court, in appraising the sufficiency of a complaint on a Rule 12(b)(6) motion, should not dismiss the complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 [ , 78 S.Ct. 99, 102, 2 L.Ed.2d 80, 84] (1957)." Syl. pt. 2, *Sticklen v. Kittle*, 168 W.Va. 147, 287 S.E.2d 148 (1981); syl., *Flowers v. City of Morgantown*, 166 W.Va. 92, 272 S.E.2d 663 (1980). *See also*, F.D. Cleckley, R.J. Davis, L.J. Palmer, *Litigation Handbook on West Virginia Rules of Civil Procedure* § 12(b)(6) (Juris Pub.2006).

In reviewing a Rule 12(b)(6), dismissal, assistance in appraising the sufficiency of the claim or counterclaim is provided by Rule 8(a)(1) of the West Virginia Rules of Civil Procedure which requires, in a pleading, "a short and plain statement of the claim showing that the pleader is entitled to relief." Subsection (e) of Rule 8 states that each averment of a pleading shall be "simple, concise and direct." As observed in *Scott Runyan Pontiac-Buick*, *supra*: "Rule 8 of the Rules of Civil Procedure requires clarity but not detail. \* \* \* Under Rule 8, a complaint must be intelligibly sufficient for a circuit court or an opposing party to understand whether a valid claim is alleged and, if so, what it is." 194 W.Va. at 776, 461 S.E.2d at 522. Thus, while bald statements or a carelessly drafted pleading will not survive a Rule

12(b)(6) motion to dismiss, *Fass v. Newsco Well Service*, 177 W.Va. 50, 52, 350 S.E.2d 562, 564 (1986), a circuit court should not dismiss a claim "merely because it doubts that the plaintiff will prevail in the action." *John W. Lodge Distributing Co. v. Texaco*, 161 W.Va. 603, 605, 245 S.E.2d 157, 159 (1978). The complaint is to be construed in the light most favorable to the plaintiff. *Price v. Halstead*, 177 W.Va. 592, 594, 355 S.E.2d 380, 383 (1987); *Chapman, supra*, 160 W.Va. at 538, 236 S.E.2d at 212."

Petitioner believes that adequate discovery will prove facts in support of Petitioner's Petition for Writ of Mandamus that Respondent isn't following the West Virginia statutory or constitutional mandatory duty that he reside at the seat of government during his term of office, and keep there the public records, books and papers pertaining to his respective office. In support of this, attached hereto and incorporated by reference is "Exhibit A", is a calendar released by the Respondent to the Associated Press that attempted to report his whereabouts for November 2018 through May 2019. On page 3, footnote 1, in Respondent's Memorandum of Law in Support of Respondent's Motion to Dismiss, Respondent asserts that purported "absenteeism" are hearsay statements from online news articles. Respondent seems to acknowledge that proper discovery should proceed to authenticate the facts surrounding Respondent's residency so that the Court can make an informed decision when applying it to the long-held test for residency in West Virginia, as set forth hereinabove.

Petitioner's Petition for Writ of Mandamus was simple, concise, direct, short and a plain statement of the claim showing that the Petitioner was entitled to relief. Petitioner requested that a writ of mandamus be issued henceforth that Respondent meet his nondiscretionary mandatory constitutional and statutory duties, pursuant to Section 1 of Article VII of the West Virginia Constitution and W. Va. Code § 6-5-4, and he be ordered to reside at the seat of government during his term of office, and keep there the public records, books and papers pertaining to his respective office; award costs and grant such other relief as the Court deems

equitable. This court should not dismiss a claim merely because it doubts that Petitioner will prevail in the action after discovery is completed.

6) Petitioner is requesting discovery be granted in this matter; an evidentiary hearing before this court without a jury after the discovery has been completed; a finding of facts specially by this Court and a statement separately of its conclusions of law thereon; and a writ of mandamus be issued henceforth that Respondent meet his nondiscretionary mandatory constitutional and statutory duties, pursuant to Section 1 of Article VII of the West Virginia Constitution and W. Va. Code § 6-5-4, and he be ordered to reside at the seat of government during his term of office, and keep there the public records, books and papers pertaining to his respective office; award costs and grant such other relief as the Court deems equitable.

The parties were before this Court at a hearing held on August 27, 2018 in Civil Action Number 18-P-217 on a prior Petition for Writ of Mandamus filed by Petitioner. The aforesaid hearing was set regarding a motion to dismiss by Respondent, based on the grounds concerning Petitioner's failure to provide notice to Respondent pursuant to W. Va. Code § 55-17-3 et al., and a motion to compel discovery filed by Petitioner against Respondent.

At the aforesaid hearing, the Court appeared concerned about how it could enforce an Order by the Court against Respondent. Petitioner would first advise the Court that both parties are under an obligation to follow any Order issued by this Court. If a party fails to abide by an Order of the Court, then they are subject to contempt of a Court Order and various civil sanctions.

Alternatively, the Court may find, based on the facts and conclusion of law, at the evidentiary hearing in this matter that Respondent has an ongoing "other disability" of holding the office of Governor and until the "other disability" is removed then he shall not act as Governor.

Section 1 of Article VII of the West Virginia Constitution provides as follows:

**7-16. Vacancy in governorship, how filled.**

In case of the death, conviction or impeachment, failure to qualify, resignation, or other disability of the governor, the president of the Senate shall act as governor until the vacancy is filled, or the disability removed; and if the president of the Senate, for any of the above named causes, shall become incapable of performing the duties of governor, the same shall devolve upon the speaker of the House of Delegates; and in all other cases where there is no one to act as governor, one shall be chosen by joint vote of the Legislature. Whenever a vacancy shall occur in the office of governor before the first three years of the term shall have expired, a new election for governor shall take place to fill the vacancy.

The Court, after the conclusion of the evidentiary hearing in this matter, may find that Respondent's failure to comply with a mandatory constitutional duty is a "other disability" under Section 1 of Article VII of the West Virginia Constitution. Respondent could be granted a certain amount of days to remove this "other disability" by residing at the seat of government during his term of office, and keep there the public records, books and papers pertaining to his respective office. If Respondent doesn't remove the disability then the president of the Senate shall act as governor until the disability has been removed, pursuant to Section 1 of Article VII of the West Virginia Constitution.

**WHEREFORE**, Petitioner respectfully requests that this Court deny Respondent's Motion to Dismiss for the aforesaid reasons and the Court advance this action by granting the discovery requests by Petitioner.

Dated this 23<sup>rd</sup> day of May 2019.

G. Isaac Sponaugle, III  
Petitioner



SPONAUGLE & SPONAUGLE  
ATTORNEYS AT LAW  
P. O. BOX 578  
FRANKLIN, WEST VIRGINIA 26807  
(304) 358-2337 (office)  
(304) 358-2337 (fax)  
[isaac@sponauglelaw.com](mailto:isaac@sponauglelaw.com)



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G. Isaac Sponaugle, III  
State Bar #9720  
Petitioner

### **CERTIFICATE OF SERVICE**

Petitioner does certify that a true copy of the foregoing *Petitioner's Response to Respondent's Motion to Dismiss* was served upon Respondent by depositing a true copy of same with the United States Postal Service, postage prepaid, to counsel for Respondent, Michael W. Carey and David R. Pogue, addressed to them at P.O. Box 913, Charleston, West Virginia 265323, on this 23<sup>rd</sup> day of May 2019.



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Petitioner

"Exhibit A"

# November 2018

November 2018							December 2018						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
4	5	6	7	8	9	10	2	3	4	5	6	7	8
11	12	13	14	15	16	17	9	10	11	12	13	14	15
18	19	20	21	22	23	24	16	17	18	19	20	21	22
25	26	27	28	29	30		23	24	25	26	27	28	29
							30	31					

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Oct 28	29	30	31	Nov 1	2	3
				Coalfields	Eastern Panhandle 10:00am Cacapon Press Conference (Cacapon State park) 2:00pm Event	Coalfields
4	5	6 Charleston ELECTION DAY 10:00am Voting 6:00pm Mansion	7	8	9 10:00am WVU for Chambers event (Morgantown, WV) 2:30pm Veterans Day Video Shoot	10
11	12	13 Mansion decorating 9:00am WV Youth Summit on Opioid Awareness (Charleston Coliseum)	14	15	16 10:00am State Police Cadet Graduation (Riggleman Hall at the University of Charleston)	17
18 11:00am Justice Family Xmas Card shoot (Mansion)	19 1:00pm Greenbrier County Grant Awards (O School Conference 1:45pm Kennie Bass Interview (O School))	20	21	22 Thanksgiving	23	24
25	26	27	28 10:30am Wheeling Grant (Wheeling City Hall)	29 6:30pm Basketball game (Home)	30 6:30pm Basketball Game (Home)	Dec 1

# December 2018

December 2018							January 2019						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
2	3	4	5	6	7	1	6	7	8	9	10	11	12
9	10	11	12	13	14	8	13	14	15	16	17	18	19
16	17	18	19	20	21	15	20	21	22	23	24	25	26
23	24	25	26	27	28	22	27	28	29	30	31		
30	31												

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Nov 25	26	27	28	29	30	Dec 1
						5:30pm Tree Lighting Tentative
2	3 12:00pm Huntington Press Conference (Proact, 800 20th St, Huntington, WV	4 2:00pm Charleston Grants 5:55pm Joyful Night Ceremony (Capitol	5	6 6:30pm Basketball Game, Home	7 10:00am Speak to Chamber of 6:30pm Basketball game (Home)	8
9	10	11 1:30pm BUILD Grant Press Conference (Washington, D.C.)	12	13	14 11:30am Parkersburg family 1:30pm Governor's Export Awards	15 10:00am Crumpler Santa 2:00pm Logan Santa 7:00pm Christmas Party
16	17	18 2:00pm Do not schedule 6:00pm Basketball game (Home - Christmas Tournament)	19 6:00pm Basketball game (Home - Christmas Tournament)	20	21 10:00am RISE Key Turnover Event (Charmco )	22 2:00pm Basketball Game (Wheeling Park)
23	24	25 Christmas	26	27 8:00am Basketball trip (KSA Christmas Tournament)	28 8:00am Basketball trip (KSA Christmas 4:30pm WVU Camping World Bowl (Camping	29 8:00am Basketball trip (KSA Christmas Tournament)
30	31	Jan 1, 19	2	3	4	5
Governor Event						

# January 2019

January 2019							February 2019						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
6	7	8	9	10	11	12	3	4	5	6	7	8	9
13	14	15	16	17	18	19	10	11	12	13	14	15	16
20	21	22	23	24	25	26	17	18	19	20	21	22	23
27	28	29	30	31			24	25	26	27	28		

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Dec 30	31	Jan 1, 19	2	3	4	5
			6:30pm Basketball game (Home)			6:30pm Basketball game (Home)
6	7	8	9	10	11	12
		10:00am Revenue Press Conference	6:00pm State of the State	9:00am Teacher of the 10:00am State Journal 11:00am Hoppy 11:30am Kent Carper 1:00pm Opioid disposal	6:30pm Basketball Game (Princeton)	
13	14	15	16	17	18	19
	9:00am County 9:45am Meetings 11:00am Cabinet 1:00pm Marshall 1:15pm John Crites			Mark Curtis Interview (Mansion)	6:30pm Basketball game (Home)	
20	21	22	23	24	25	26
	12:00pm MLK Bell Ringing Ceremony	9:00am FYI - Mansion Tour/Youth in Government 10:30am ABC Mount Olive Event	9:00am Oil & Gas Association's Winter 10:00am FYI - Mansion 10:15am Photo with 6:30pm Basketball Game	10:00am Pipestem for upgrade 1:00pm FYI - Mansion Tour/Mercer County 1:30pm FYI - Mansion	10:00am FYI - Mansion Tour/New River 1:00pm Meeting (Mansion)	
27	28	29	30	31	Feb 1	2
9:15am Hospitality University Conference (Greenbrier) 12:00pm Big Atlantic Classic Banquet	9:00am FYI - Cabinet Meeting (Governor's 6:30pm Basketball game (Bluefield)	Catholic Schools Week 9:00am FYI - Mansion 11:00am Mining 12:00pm Lunch with pat 1:00pm Wheeling	photo request anytime 9:00am FYI - Mansion Tour/New River 10:00am Hoppy (Senate 7:00pm Basketball Game	8:00am FYI - Cabinet Meeting (Governor's 11:00am Board of public 12:30pm Meeting with		

# February 2019

February 2019							March 2019						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
3	4	5	6	7	8	9	3	4	5	6	7	8	9
10	11	12	13	14	15	16	10	11	12	13	14	15	16
17	18	19	20	21	22	23	17	18	19	20	21	22	23
24	25	26	27	28			24	25	26	27	28	29	30
							31						

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Jan 27	28	29	30	31	Feb 1	2
	4 9:00am GEHS FBIA Speech (GEHS) 12:00pm Lunch (Mansion )	5 9:00am FYI - Mansion 10:00am FYI - Mansion 1:00pm FYI Mercer 1:30pm FYI - Mansion 6:30pm Basketball game	6 DO NOT SCHEDULE	7 Veterans Visibility Day 11:00am Lunch/Meeting 12:00pm Veterans 12:30pm USGA Skype 6:30pm Basketball Game	Catholic Schools Week photo 11:00am Art contest 11:45am Skype 12:30pm Chelsea Ruby 1:00pm Black History	2:30pm National Guard Change of Command 5:40pm Basketball Game
3					8 DO NOT SCHEDULE	9
10	11 10:00am FYI - Mansion Tour/New River 12:30pm Association of 1:30pm FYI - Mansion 6:30pm Basketball Game	12 12:00pm Bob Murray (Mansion) 2:00pm Arts Day 2:30pm Occupational 6:30pm Basketball Game	13 DO NOT SCHEDULE	14 9:00am FYI - Mansion 12:00pm Taylor County 12:15pm Boards and 12:30pm Greenbrier 1:00pm Arts Day	15 11:00am ODCP Announcement (Reception Room)	16
17	18	19 9:30am FYI - Mansion Tour/Ravenswood High School 1:00pm FYI - Mansion Tour/Delegate	20 10:30am FYI - Mansion Tour/Renee Schneid - 8th Grade	21 9:00am FYI - Mansion 9:00am FYI - Mansion 10:00am FYI - Mansion 11:00am History Day 11:30am Meet and	22 10:30am FYI - Mansion Tour/Leadership Ohio Valley	23 6:00pm Basketball Game
24	25 9:00am FYI - Mansion Tour/Sherry Smith	26 9:00am FYI - Mansion Tour/Youth in 10:00am Call 10:00am FYI - Mansion 7:00pm Basketball Game	27 12:00pm School for the Deaf and Blind sing to the Governor 1:00pm FYI - Mansion Tour/Sean	28 9:00am Bill Signing - Computer Science (Cranberry Prosperity Elementary 4575 8:00pm Meeting in CRW	Mar 1	2

# March 2019

March 2019							April 2019						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
3	4	5	6	7	1	2	7	8	9	10	11	12	13
10	11	12	13	14	15	16	14	15	16	17	18	19	20
17	18	19	20	21	22	23	21	22	23	24	25	26	27
24	25	26	27	28	29	30	28	29	30				
31													

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Feb 24	25	26	27	28	Mar 1	2
3	4 10:30am MMI press 11:00am Rebecca - 12:00pm National 12:30pm Private bill	5	6 11:00am Basketball Game (Charleston Civic Center)	7	8 2:00pm Sportsman Award private 2:30pm Meeting with 3:00pm Horse bill	9
10	11	12	13 11:00am Secondary Roads Press 12:00pm TENATIVE-Bill 12:30pm	14 11:00am Toyota Event (Buffalo Plant)	15	16
17	18	19 2:00pm DOH Meeting (Culture Center)	20	21	22 9:00am Meeting with Japanese Ambassador	23 1:00pm EQT Students of Excellence
24	25	26	27 11:00am Bill Review (Mansion) 2:00pm SB 622 Private Signing Ceremony	28	29 11:00am Larry Puccio meeting with 3:00pm State Police 6:30pm	30
31	Apr 1	2	3	4	5	6

# April 2019

April 2019							May 2019						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
7	1	2	3	4	5	6	5	6	7	8	9	10	11
14	8	9	10	11	12	13	12	13	14	15	16	17	18
21	15	16	17	18	19	20	19	20	21	22	23	24	25
28	22	23	24	25	26	27	26	27	28	29	30	31	

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Mar 31	Apr 1	2	3	4	5	6
			11:00am Gold Rush Event (Babcock State Park)		HOLD ALL DAY	5:30pm Greenbrier County 3rd Annual Trump Train Dinner (Underwood building state fair grounds)
7	8 11:30am Ken Humphreys and 2:00pm Meeting with Teresa from Kanawha 2:30pm Private Bill	9 10:00am Ronceverte Grants	10 10:00am Fayetteville Grants 7:00pm Board	11 10:00am Pineville grants 11:00am Pineville Elementary Lets Read 1:30pm Welch Grants 7:00pm Dinner	12 5:30pm Beckley Chamber of Commerce Dinner (Convention Center)	13
14	15	16 2:00pm DOH Press Conference (Reception room)	17 1:30pm Nicholas County Grants (Summersville) 3:00pm Town of Burnsville Grants 4:00pm Weston Grants	18 2:00pm Coalfields Expressway Groundbreaking	19	20
21	22 Northern Panhandle Day 11:00am Homer 1:00pm Wellsburg 2:30pm Moundsville	23	24 10:30am FYI - Mansion Tour/Pleasant County 2:00pm Meeting with 3:00pm Bill Raney	25 11:00am MarkWest Event (West Union) 1:30pm Pine Grove Grants (Pine Grove) 2:30pm Valley High	26 2:00pm State Park Camping Press Event (Audra State Park)	27
28	29	30 Legislative Interims	May 1	2	3	4
		11:30am Meeting with 12:00pm Meeting with 1:30pm History Bowl 2:00pm Dave Perry				

# May 2019

May 2019							June 2019						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
5	6	7	8	9	10	11	2	3	4	5	6	7	8
12	13	14	15	16	17	18	9	10	11	12	13	14	15
19	20	21	22	23	24	25	16	17	18	19	20	21	22
26	27	28	29	30	31		23	24	25	26	27	28	29
							30						

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Apr 28	29	30	May 1	2	3	4
			1:00pm King Coal Highway Groundbreaking (Bluefield at the Bridge to Nowhere)	2:00pm Revenue Press Conference 4:30pm Meeting with Dr. Paine re: education survey	9:30am Golden Horseshoe Event 1:00pm Tentative - T&T Muddy Creek Plant 6:00pm Dinner	
5	6	7	8	9	10	11
		12:00pm Meeting (Mansion) 1:30pm HHH Check Presentation 2:00pm Employee	1:30pm Rail Trail Acquisition Press Event (Clay County)		11:00am Wind Farm Press Event (Mineral) 2:00pm CDBG Grant 3:00pm Hollywood 6:00pm Dinner	
12	13	14	15	16	17	18
6:30pm Governor speaking at a Commencement-Awaiting Details (Raleigh County Armory)	9:00am EPA Administrator Press Conference (Minden, 11:30am Press Conference with Mary	9:00am National Assn. of State Technology Directors (Greenbrier) 1:00pm DOJ Press Event	9:00am HOLD	10:30am Aviagen Chicken Barn Grand Opening (Monroe County)		
19	20	21	22	23	24	25
	Legislative Interims		HOLD DAYTIME			
		11:00am Rob McNally-EQT 1:00pm Steve White	11:00am Marshall county revisit for road conditions (Marshall county courthouse)	5:00pm HOLD Dinner		Vandalia (Capitol)
26	27	28	29	30	31	Jun 1
Vandalia (Capitol)	11:00am Unclaimed Veterans Ceremony (Institute) 2:00pm Union Soldiers and Sailors		12:30pm BIC Luncheon (Mansion)	12:30pm BIC Luncheons (Mansion)	12:30pm BIC Luncheon (Mansion)	



**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**

STATE OF WEST VIRGINIA, ex rel.,

**G. ISAAC SPONAUGLE, III,**  
West Virginia citizen and taxpayer,  
Petitioner,

v.

Civil Action Number: 18-P-442  
Honorable Charles E. King, Judge

**JAMES CONLEY JUSTICE, II,**  
Governor of the State of West Virginia,  
Respondent.

**MOTION TO COMPEL RESPONDENT TO ANSWER**

**PETITIONER'S FIRST COMBINED DISCOVERY DIRECTED TO RESPONDENT**

Comes now your Petitioner and respectfully moves this Court, pursuant to Rule 37 of the West Virginia Rules of Civil Procedure, to compel Respondent to answer Petitioner's First Combined Discovery Directed to Respondent.

On February 25, 2019, Respondent was mailed Petitioner's First Combined Discovery Directed to Respondent. Respondent, in a subsequent filing, asserted that it received the same on February 28, 2019. Pursuant to Rules 33, 34 and 36 of the West Virginia Rules of Civil Procedure, Respondent was required to answer and respond to the aforesaid discovery requests within 30 days of service of the same.

Respondent filed a motion entitled Respondent's Motion to Stay Discovery on or about March 1, 2019 therein requesting that this Court enter an Order granting a stay of the discovery, pursuant to Rule 26(c) of the West Virginia Rules of Civil Procedure. That request was not granted by the Court.

As of Thursday, May 23, 2019, Respondent has failed to provide and continues to refuse to provide any answers to Petitioner's First Combined Discovery Directed to Respondent.

**WHEREFORE**, for the aforesaid reasons, Petitioner is seeking an Order from the Court to compel an answer by Respondent to Petitioner's First Combined Discovery Directed to Respondent. Additionally, to sanction Respondent and require Respondent to pay the reasonable expenses incurred in obtaining the order, including attorney fees and general relief.

Dated this 23<sup>rd</sup> day of May 2019.

G. Isaac Sponaugle, III  
Petitioner

SPONAUGLE & SPONAUGLE  
ATTORNEYS AT LAW  
P. O. BOX 578  
FRANKLIN, WEST VIRGINIA 26807  
(304) 358-2337 (office)  
(304) 358-2337 (fax)  
[isaac@sponauglelaw.com](mailto:isaac@sponauglelaw.com)



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G. Isaac Sponaugle, III  
State Bar #9720  
Petitioner

#### **CERTIFICATE OF SERVICE**

Petitioner does certify that a true copy of the foregoing *Motion to Compel Respondent to Answer Petitioner's First Combined Discovery Directed to Respondent* was served upon Respondent by depositing a true copy of same with the United States Postal Service, postage prepaid, to counsel for Respondent, Michael W. Carey and David R. Pogue, addressed to them at P.O. Box 913, Charleston, West Virginia 265323, on this 23<sup>rd</sup> day of May 2019.



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Petitioner

**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**

STATE OF WEST VIRGINIA, ex rel.,

**G. ISAAC SPONAUGLE, III,**  
West Virginia citizen and taxpayer,  
Petitioner,

v.

Civil Action Number: 18-P-442  
Honorable Charles E. King, Judge

**JAMES CONLEY JUSTICE, II,**  
Governor of the State of West Virginia,  
Respondent.

**-NOTICE OF HEARING-**

To: James Conley Justice, II

Please take notice that on **Wednesday, June 5, 2019, at 11:00 am**, or as soon thereafter as counsel can be heard, at the Kanawha County Courthouse; the undersigned will bring the above matter on for a hearing for the relief requested in *Motion to Compel Respondent to Answer Petitioner's First Combined Discovery Directed to Respondent*.

Dated this 23<sup>rd</sup> day of May 2019.

G. Isaac Sponaugle, III  
Petitioner

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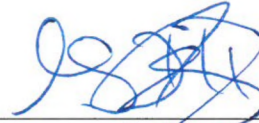
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G. Isaac Sponaugle, III  
State Bar #9720  
Petitioner

**CERTIFICATE OF SERVICE**

Petitioner does certify that a true copy of the foregoing *Notice of Hearing* was served upon Respondent by depositing a true copy of same with the United States Postal Service, postage

prepaid, to counsel for Respondent, Michael W. Carey and David R. Pogue, addressed to them at P.O. Box 913, Charleston, West Virginia 265323, on this 23<sup>rd</sup> day of May 2019.

A handwritten signature in blue ink, appearing to be "J. S. P.", is written above a horizontal line.

Petitioner